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January 26, 2015

**BY ECF**

The Honorable William H. Pauley III  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1920  
New York, New York 10007

Re: *Berkley Networks Corp. d/b/a inMarkit Media, 14-cv-05145 (WHP)*

Dear Judge Pauley:

On behalf of Plaintiff in the above entitled action, we write in furtherance of the telephone conference with the Court that took place last Thursday, January 22, 2015, and our call with Your Honor's clerk this morning.

As the Court will recall, during the Thursday conference, while discussing pretrial matters, we advised the Court that Plaintiff had been considering withdrawing its damages claims in this action and pursuing only equitable relief, which would have the effect of eliminating the availability of a jury trial. The Court then asked us to advise it by this coming Wednesday of Plaintiff's decision in this regard.

This is to advise the Court that Plaintiff has decided to withdraw its claims for damages in this litigation, and pursue only equitable relief, provided the case is tried to the Court. As noted in our call, there is strong precedent in this Court and Circuit that if a party withdraws its claims for damages and pursues only equitable relief, all issues are to be tried to the Court. *See, e.g., Guthrie Healthcare Sys. v. ContextMedia, Inc.*, 2014 WL 185222, at \*14 (S.D.N.Y. Jan. 16, 2014); *Chevron Corp. v. Donziger*, 2013 WL 5526287, at \*2 (S.D.N.Y. Oct. 7, 2013).

So the Court is aware, we notified Defendants' counsel of Plaintiff's foregoing intentions by letter dated January 24, 2015, and had further correspondence with counsel over the weekend. In particular, we advised counsel that Plaintiff was prepared to withdraw claims for relief 5(i) - 5(iv) in its Amended Complaint (Dkt. No. 18, p. 13). We further advised counsel that were this case to be tried to the Court, Plaintiff was also prepared to avoid the expenditure of resources associated with Defendants' intended motion for partial summary judgment with respect to

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Plaintiff's counterfeiting claim, by withdrawing that claim as well. In response, Defendants' counsel has agreed not to oppose such withdrawals, and, consequently, to a bench trial.

Accordingly, we respectfully request that the Court confirm that if Plaintiff proceeds to withdraw its claims as proposed, this case will be tried to the Court. We believe the proposal we have made will significantly focus the issues for trial, and is in the interest of judicial economy. In that regard, we are prepared to file a formal withdrawal of Plaintiff's damages claims, together with the withdrawal of the claim for service mark counterfeiting, in whatever form the Court may require.

We have reviewed this letter with counsel for Defendants, who does not object to its contents. We thank the Court for its consideration.

Respectfully,

ARNOLD & PORTER LLP

By: /s/ Louis S. Ederer  
Louis S. Ederer

cc: Defendants' counsel (by ECF)